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D. RemarksRejections Under 35 U.S.C. §132 (New Matter).

Claim 14 has been rejected based on the reasoning that the reference to "copyright" presents new matter. Applicant respectfully disagrees. Such teachings are present in the originally submitted application, as well as the amended version submitted on 10/22/2003. The Examiner's attention is directed to the following text of the originally filed Specification:

Also, when any procedures related with *copy rights* of records/CD are required, the Headquarters shall do it for the Member Store, and each Store will enjoy executing EC efficiently at low costs. When a Member belonging to a Store has accessed H. Server via Internet, the customized Home Page is displayed to the Member and he/she feels as if he/she was trading directly with the Store to which he/she belongs, without awareness of the Headquarter.¹

Claims 13, 15 and 19 have been rejected based on the reasoning that references to the "url" approaches of the claims present new matter. Again, Applicant respectfully disagrees. Such teachings were also present in the originally submitted application. The Examiner's attention is directed to the following text of the originally filed Specification:

In such a case, there are *two kinds of URLs*--- the one is common in the whole system and the other is classified by each Franchise Store. For example, let's look at the <http://www.abc.xyz.co.jp>, which is for the Franchise Store. *The part of "abc" identifies the Member Store, while the URL without "abc" is used commonly in the whole System.* In any case, the Member shall be connected with H. Server 10 by "xyz.co.jp" (Step S4). At that time, H. Server 10 shall judge whether the access is the first or the second one and so on, by confirming the

¹ Applicant's originally filed Specification, Page 5, Second Paragraph from the bottom, emphasis added. See also paragraph [0032] of the amended Specification.

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Terminal ID Code added to the Server in the Member's first access from Server
30 (Step S5).²

Thus, because the limitations of claims 13, 14, 15 and 19 are clearly supported by the
5 Specification, such claims cannot present new matter, and this ground for rejection is traversed.

Rejection of Claims 1-9 Under 35 U.S.C. §103(a), based on Clark (U.S. Patent No. 6,351,738) in
view of Conklin et al. (U.S. Patent No. 6,351,738), further in view McGee (U.S. Patent No.
6,393,468).

10 The invention of claim 1 is directed to a franchise system for organizing and establishing
a headquarter for business transactions over a network. The franchise system includes various
components including at least one headquarter network server; a plurality of franchise store
servers, and a plurality of member servers.

The headquarter network server has a number of elements including merchandise
15 information memory data, a home page creation system, a home page sending service, and order
receiving system, a received data transfer system, and a franchise store ID system.

As is well established, to establish a prima facie case of obviousness, a rejection must
meet three basic criteria. First, there must be some suggestion or motivation to modify a
reference or combine reference teachings. Second, there must be a reasonable expectation of
20 success. Finally, the prior art reference(s) must teach or suggest all claim limitations.

Applicant traverses the present rejection based on a number of grounds.

A) The Combination of References Does Not Show All Claim Limitations

25 The cited combination of references does not show or suggest all the limitations of claim
1. In particular, the references do not show or suggest (1) an order receiving system that
processes orders... through the home pages of each franchise store or (2) a franchise store ID
system that matches a franchise store to a person ordering... based on uniform resource locator
(url) values.

30

² Applicant's originally filed Specification, Page 3, Paragraph "E", which continues to Page 4,
emphasis added. See also paragraph [0025] of the amended Specification.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**(1) Order Receiving System**

To show Applicant's order receiving system, the rejection relies on the reference *Clark*:

[Clark teaches]... an order receiving system that processes orders from the plurality of member terminals through the home pages of each franchise store...³

While making the above assertion, the rejection admits such a teaching is not "specifically" shown in the reference. The rejection then relies on the following reasoning to show such limitation.

Clark does not specifically call out a home page... However Clark does disclose and teach regarding electronic commerce systems for franchiser and franchisee's and it was well known at the time of applicant's invention that electronic commerce systems would have and did contain home page(s)...⁴

The above excerpt is not clear about the particular 35 U.S.C. §103(a) rationale that is being relied upon. However, because it is clear that *Clark* does not show such limitations explicitly, the rejection can only be based on (1) the above teachings are implicitly disclosed in *Clark* (MPEP §2144.01) or (2) the Examiner is tacking official notice regarding such teachings (MPEP §2144.03).

In either case, the reasoning is not sufficient to establish a prima facie case of obviousness.

A rejection based on an implicit disclosure of a reference cannot exist in a vacuum. The rejection must still indicate how/why the reference shows a particular claim limitation/teaching.

Absent such specifics, a prima facie case of obviousness does not exist:

[W]hen an examiner maintains that there is an explicit or implicit teaching or suggestion in the prior art, the examiner should indicate where (page and line or

³ See the Office Action, dated 06/24/04, Page 3, third and fourth lines from the bottom.

⁴ See the Office Action, dated 06/24/04, Page 3, bottom line to Page 4, Lines 1-4.

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figure) such a teaching or suggestion appears in the prior art.⁵

Applicant has reviewed *Clark* in detail, and has found no portion of the reference that implicitly teaches "an order receiving system that processes orders through the home pages of each franchise store". It is the Examiner that bears the burden of showing such a feature. Accordingly, because such a feature has not been shown, a prima facie case of obviousness cannot have been established based on an implicit teaching in the reference.

If the Examiner is taking official notice regarding such a teaching, Applicant seasonably traverses such an assertion and requests a reference in support. Such a reference must address the claim limitations at issue. Applicant will readily admit that individual home pages and associated infrastructure were well known at the time of the invention. However, this is a far cry from "an order receiving system" within a franchise headquarter network server that processes orders through home pages of each franchise store, where each franchise store is a different store.

It is believed that a fair reading of *Clark* will clearly reveal why the reference cannot implicitly show such limitations, and why adding well-known teachings of the art to the combination still fails to arrive at Applicant's unique combination. A full reading of *Clark* is not only desirable, but a necessary consideration in establishing grounds for rejection:

[P]rior art references... must be read as a whole and consideration must be given where the references diverge and teach away from the claimed invention...⁶

As noted in Applicant's previous reply, when read as a whole, *Clark* is believed to clearly teach away from "an order receiving system that processes orders through the home pages of each franchise store", as recited in claim 1.

The invention of claim 1 clearly recites that orders are received through multiple home pages, each corresponding to a different franchise store. In very sharp contrast, *Clark* teaches a single website.

⁵ *In re Jones*, 62 USPQ 2d 1206, 1208 (B.P.A.I. 2001) (unpublished) (citing *In re Rijckaert*, 9 F.3d 1531, 1533, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993), citing *In re Yates*, 663 F.2d 1054, 1057, 211 USPQ 1149, 1151 (C.C.P.A. 1981)).

⁶ *Akzo N.V. v. United States Intl' Trade Comm'n*, 1 USPQ 2d 1241, 1246 (Fed. Cir. 1986).

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E-commerce system 422 preferably should provide *an Internet website* for the HBE 412 that may be accessed by suppliers 424, participants 414, 414' optionally, customers 418... In a typical goods or services transaction... a participant 414 or 414' may access *the aforementioned website* or dedicated network and makes a purchase request using a purchase order form available on the e-commerce system.⁷

The above is believed to provide clear evidence that *Clark* teaches a system that processes orders received at a single website from multiple participants (e.g., suppliers, customers...) and not orders through multiple home pages, as recited in claim 1.

For these reasons, the above noted claim limitation is not shown or suggested by the cited references.

(2) Franchise Store ID System

The cited combination of references does not show or suggest a "franchise store ID system", as recited in claim 1.

The rejection admits that *Clark* in view of *Conklin et al.* does not show the franchise store ID system of claim 1.⁸ To show such a limitation, the rejection proposes modifying *Clark* in view of *Conklin* according to *McGee*.

McGee does disclose the franchise ID store ID system matching franchise stores to the person accessing the franchise system based on uniform resource locator value set up in advance.... (see at least Abstract and Col. 12, lines 32-35).⁹

First and foremost, *McGee* provides no mention of multiple stores, thus it is not understood how the reference can teach a system that provides matches to multiple franchise stores. The reference, like *Clark* is aimed at a single entity: a service provider.

The embodiment described below is a system for providing customer access to a

⁷ *Clark*, Col. 11, Lines 19-44, emphasis added.

⁸ See the Office Action, dated 06/24/04, Page 8, second paragraph from the bottom.

⁹ See the Office Action, dated 12/10/03, Page 6, Last two lines to Page 7, Line 2.

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service provider's major customer service system (MCSS)... In the present case the service provider is *a telephone company* such as BT.¹⁰

5 For this reason alone, a prima facie case of obviousness cannot have been established for this claim.

Still further, *McGee* provides no matching of a person to a franchise store based on url values. As recited in the Abstract of *McGee*, the reference teaches the return of a Web page in response to a request.

10 [A] session manager which intercepts all incoming *requests* from clients for Web pages. Each *request* incorporates a token... a URL associated with the matching token is used... to return a Web page indicated by the URL to the requester.¹¹

Thus, *McGee* associates a URL with a request, not a client (e.g., person).

15 For this reason, the cited references do not show or suggest a franchise store ID system, as recited in claim 1.

B) Motivation For the Proposed Combination of References is Lacking/Reference Teaches Away

20

Even if the cited combination of reference could show all limitations of claim 1, the requisite motivation for a prima facie case of obviousness is believed to be lacking, or the references rebut any prima facie case.

25 As noted above, references must be read as a whole. When viewed as a whole, *Clark* clearly teaches away from Applicant's invention.

As argued previously, Applicant's claim 1 invention is directed to a franchise system, and includes franchise store servers in combination with one or more headquarter servers.

Clark explicitly indicates that franchise systems are not desirable.

¹⁰ *McGee*, Col. 5, Lines 32-35.

¹¹ *McGee*, Abstract.

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[T]he franchisor 312 imposes extensive limitations on how the franchisees 314 may conduct their business... This pervasive and highly restrictive level of control... inhibits the franchisees ability and desire to introduce innovations... may hinder growth and prosperity of the franchise. Additionally, the costs... may be prohibitive for many businesspersons.¹²

5

Because *Clark* explicitly teaches away from franchise systems, the reference is clear to distinguish its HBE from a franchise system:

10 Significantly, and *unlike the traditional franchise system 310 depicted in FIG. 3*, participants 414, 414' are free to obtain any of an assortment of business support mechanisms.... Further, the HBES 410 permits the participants 414, 414' to obtain other business support mechanisms from suppliers 420 which are not affiliated with the HBES 410, if the participants so desire.¹³

15 For this reason, any prima facie case of obviousness is rebutted by *Clark*, as the reference teaches away from the invention.

A prima facie case of obviousness may also be rebutted by showing that the art, in any material respect, teaches away from the claimed invention.¹⁴

20 For these additional reasons, the rejection of claim 1 is traversed.

C) No Grounds for Rejection Provided for Claim 2.

25 Claim 2 was listed as being rejected on based on *Clark* in view of *Conklyn et al.*, further in view *McGee*. Applicant believes this was an error as no reasoning for such a rejection was provided.

If this is not an error, a prima face case of obviousness cannot have been established, as the rejection would be defective.

30 D) Various Dependent Claims are Separately Patentable

¹² *Clark*, Col. 8, Lines 34-56.

¹³ *Clark*, Col. 10, Lines 13-21, emphasis added.

¹⁴ *In re Geisler*, 43 USPQ2d 1362, 1366 (Fed. Cir. 1997).

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Various claims depending from claim 1 are separately patentable.

Claim 4, which depends from claim 1, recites that the home page sending service sends predetermined guest home page data when a member server accessing the system does not match any franchise store.

5 To show the limitations of claim 4, the rejection argues the following:

McGee teaches... the home page sending service sends predetermined guest home page data when a member server accessing the Franchise System does not match any franchise store (Col 13, lines 3-6).¹⁵

10

Applicant respectfully disagrees, as the above-cited portion of *McGee* teaches the opposite of claim 4. The portion of *McGee* relied upon by the rejection must be considered in context. The portion is included in the excerpt below:

15

When, in response to a user request, the gateway processor 340 retrieves a page building gateway from the gateway store 380 (*step 425 of FIG. 4*)... Therefore... the gateway processor if necessary accesses the session store 330 to retrieve any prior-input dialogue information which is also to be included in the Web page. Then, in step 820, the HTML file for the Web page is generated, by well-known procedures, on the basis of the respective information. Subsequently, the procedure continues with step 435 of FIG. 4.¹⁶

20

From the above, it is clear that the teachings relied upon by the rejection occur in step 425. However, step 425 cannot be reached if login data does is not matched:

25

The login procedure... occurs in step 425... Accordingly, it is assumed that the user... has provided a name, a password and has clicked on the submit button of the login page to initiate the login procedure...¹⁷

¹⁵ See the Office Action, dated 12/10/03, Page 10, last paragraph.

¹⁶ *McGee*, Col. 12, Line 58 to Col. 13, Line 6.

¹⁷ *McGee*, Col. 10, Lines 44-50.

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Thus, the above portion of *McGee* describes a page that is retrieved only after one accessing the system does match a database value (has logged in). This is essentially the opposite of Applicant's invention, which "sends predetermined guest home page data when a member server accessing the system does not match any franchise store.

5 For this reason, the reference does not show or suggest the limitations of claim 4, and this ground for rejection is traversed.

With respect to claim 5, a prima facie case cannot have been established, as the rejection has failed to give the limitations of claim 5 "patentable weight". As noted in previous responses, Applicant believes such a rationale for rejection is defective, and cannot be sufficient to establish
10 a prima facie case of obviousness.

With respect to claim 6, Applicant incorporates the same arguments set forth in previous responses:

Claim 6, which depends from claim 1, recites that the at least one headquarter network server includes a member entry database that identifies previously accessing members and
15 matches said members to a predetermined franchise store according to said member entry data.

To show the limitations of claim 6, the rejection relies on the reference *Conklin et al.*:

[R]egarding claim 6, ... the at least one headquarter network server further includes a member entry data base that identifies previously accessing members
20 and matches said members to a predetermined franchise store according to said member entry data (Col. 19, Lines 62-63).¹⁸

However, the portion cited by the rejection does not indicate any matching. In fact, the above-cited section of *Conklin et al.* teaches away from the limitations of claim 6 as it emphasizes
25 buyers have to search for companies. This is essentially the opposite of being matched to a company as recited in claim 6.

Buyer processes... include *search* and evaluate processes 70, which *enable a prospective buyer to find companies* and their products in the community and investigate their prices, terms and
30 service offerings... A buyer in this community can... determine an order's status in the system, etc. Note that access to relevant information by each type of community member (sponsor, buyer,

¹⁸ See the Final Office Action, dated 12/10/03, Page 4, Last two lines to Page 5, Lines 1-2.

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seller) is protected by password security and access levels.¹⁹

From the above it is clear that *Conklin et al.* teaches buyers that search for companies, and thus the reference cannot show or suggest the matching limitations of claim 6.

5 As in the case of claim 5, with respect to claims 7-9, a prima facie case cannot have been established, as the rejection has failed to give the limitations of claim 5 "patentable weight". Such a rationale for rejection is defective, and cannot be sufficient to establish a prima facie case of obviousness.

10 Rejection of Claim 2 Under 35 U.S.C. §103(a), based on *Clark* in view of *Conklin et al.*, further in view of *McGee*, and even further in view of *Allsop et al.* (U.S. Patent No. 5,970,472).

To the extent that this ground for rejection relies on the combination of *Clark* in view of *Conklin et al.* further in view of *McGee*, Applicant incorporates by reference herein the comments set forth above for claim 1. Namely, that the three references do not show all
15 limitations of claim 1, and/or motivation for the proposed combination is lacking, and/or teachings of the references rebuts any prima facie case of obviousness.

In addition or alternatively, modifying *Clark/Conklin et al./ McGee* according to *Allsop et al.* as proposed, still does not show or suggest the limitations of claim 2.

Applicant's claim 2 recites that the merchandise information database includes
20 information for goods not available at one of the franchise stores, but available at the headquarter. The rejection appears to admit that these limitations are not shown in *Clark* in view of *Conklin et al.* further in view of *McGee*.²⁰ However, these limitations are not shown in *Allsop et al.*, either

Allsop et al. only teaches an embodiment that can determine if a product is/is not in a
25 dealer's inventory. The reference never shows that database includes goods at a headquarter that are not in a franchise store:

[T]he manufacturer's computer system automatically accesses an inventory database to determine if a purchased product is currently in a particular dealer's

¹⁹ *Conklin et al.*, Col. 19, Line 57 to Col. 20, Line 3.

²⁰ See the Office Action, dated 06/24/04, Page 12, third paragraph.

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inventory... such that the user is not allowed to select any dealer which does not have the product in stock.²¹

5 The above excerpt clearly shows that the "inventory database" of *Allsop et al.* only includes items "in inventory" or "not in inventory" and never additionally shows items that may be at another location (e.g., a headquarters).

Still further, a close examination of *Allsop et al.* shows the reference teaches away from Applicant's claim limitations.

10 Applicant emphasizes that the "merchandise information database" of claim 2 is included as part of "at least one headquarter network server". As set forth in the above excerpt, *Allsop et al.* suggests that the "inventory database" may be maintained on the dealer's Web site. Thus, *Allsop et al.* teaches away from Applicant's claim limitations by showing different inventory databases on different websites as opposed to database on at least one headquarter server.

15 For these reasons, the combination of four references does not show or suggest all limitations of claim 2, and this ground for rejection is traversed.

Rejection of Claims 10-13 and 15-18 Under 35 U.S.C. §103(a), based on Clark in view of Danneels et al. (U.S. Patent No. 6,272,472), further in view of MICROSOFT (MICROSOFT COMPUTER DICTIONARY, Fifth Edition.

20
A) MICROSOFT Reference Not Prior Art/Traversal of Official Notice

The reference MICROSOFT has Copyright Date of 2002, thus the effective date of this reference cannot be prior to January 1, 2002 (and is likely much later). This application was filed
25 June 30, 2000. Accordingly, the effective date of MICROSOFT is after Applicant's filing date.

The rejection has relied on MICROSOFT to show considerable limitations set forth in claims 10 and 15:

30 Microsoft teaches... a participant registration process, for a franchise store identification (ID) system that checks if an accessing stores, (sic) user is accessing

²¹ *Allsop et al.*, Col. 10, Lines 4-10.

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the system for the first time, and requests a member identification number and member password if the access is a first time access, the franchise store ID system also comparing an entered member identification value and member password to entries in the member entry data 'base, and if the member identification value and password match an entry in the member entry data base matching the accessing user to the corresponding franchise store, else matching the accessing user to a guest home page (Page 3).

Because the reference MICROSOFT cannot be considered prior art, the reference cannot be utilized to show any of these claim elements.

If the Examiner is taking official notice regarding the above noted teachings, Applicant seasonably traverses such an assertion and requests a reference in support. As emphasized, any such reference must address the claim limitations at issue.

B) The Combination of References Does Not Show All Claim Limitations

In addition or alternatively, the cited combination fails to show or suggest numerous limitations set forth in Applicant's claims.

(1) Goods Master Data Base

Applicant's claim 10 recites "a goods master data base that stores goods information for... goods... not available at a particular franchise store but available at a headquarter". Such a limitation is not shown or suggested by the cited combination of references.

The rejection relies on *Danneels et al.* to show the above limitation:

Danneels discloses a goods master data base that stores merchandise data for merchandise sold by all franchise stores, a member entry data base... (see at least Abstract, Col 3, lines 64-67, Col 3, lines 1-11)...²²

Applicant first notes that the rejection fails to account for the above noted claim

²² See the Office Action, dated 06/24/04, Page 14, last partial paragraph to Page 15, Line 1.

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limitations. Applicant readily admits that in *Danneels et al.* a supplier server web site provides links to items provided by resellers. However, the supplier server of *Danneels et al.* does not include a goods data base. The supplier server only provides links to reseller servers.

5 [T]he system is set-up... such that the [supplier] web site 208 provides dynamic
linking to the [reseller] web sites 212... Thus... the client 202... accesses the
[supplier] web site 208... so that the purchaser is able to select a list of items of
the supplier that can be purchased. Once the list of items has been selected, the
web site 208 generates dynamically a list of resellers from which the items can be
10 purchased.²³

From the above, it is understood that, at best, the system of *Danneels et al.* can show a potential
buyer goods available at resellers, but cannot show any goods "not available at a reseller but
available at the supplier". Accordingly, the reference cannot show a "goods master data base" as
15 recited in claim 10.

(2) Member Entry Data Base/ Franchise Store ID

Applicant's claim 10 also recites a "member entry data base that stores a member
identification value and corresponding franchise store code", as well as a franchise store ID that
20 matches each franchise store to a person ordering. Claim 15 also recites similar limitations.

Danneels et al. does not show this limitation. Applicant has reviewed the reference in
detail and found no reference to any such data base. The cited portions relied upon by the
rejection are unrelated to any such data base.

The rejection cites that Abstract of *Danneels et al.* However, the Abstract is entirely
25 silent as to any member database, mentioning only a supplier web site and reseller web sites.
The rejection also cites Col. 3, Lines 64-67. However, this portion of the reference only
describes linking a purchaser from a supplier web site to a reseller web site. There is no
identification of the purchaser whatsoever. The rejection lastly cites Col. 3, Lines 1-11. This
portion of the reference makes no mention of any member data base, but refers only to supplier
30 and reseller web sites.

²³ *Danneels et al.*, Col. 5, Lines 51-61

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Thus, the rejection cannot have established a prima facie case of obviousness as none of the cited portions show or suggest a member entry data base, as recited in claim 10. Applicant asserts no such data base exists in the reference, and requests a particular citation in the event it is maintained that such a teaching is present in *Danneels et al.*

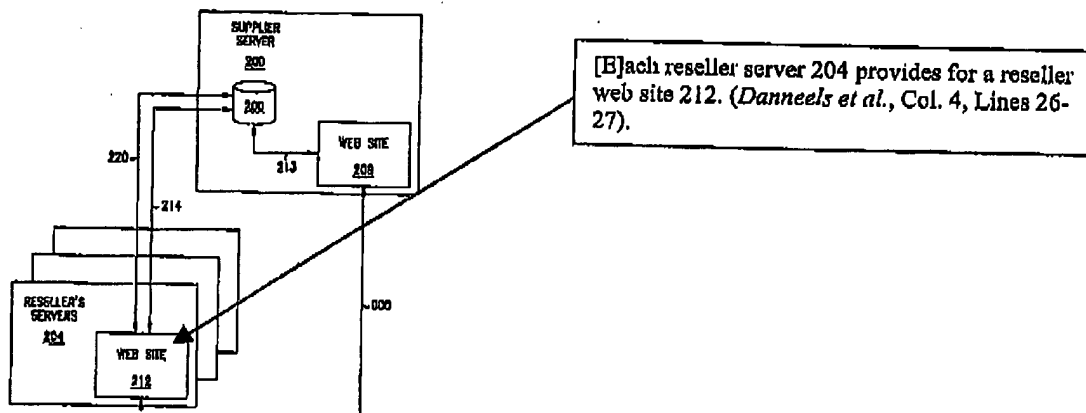
5

(3) Home Page Data Base/Creation System

Applicant's claim 10 also recites a home page data base and home page creation system. Importantly, these system elements are part of the at least one headquarter network server. Thus, in the system of claim 10, the franchise store servers do not include their own home page data base or home page creation system. Similarly, claim 15 includes similar components.

10

Danneels et al. shows essentially the opposite arrangement, with individual reseller servers generating their own respective website, rather than the supplier server doing so. This is shown in FIG. 2 of the reference.



15

Thus, because the combination of references does not show all the limitations of claims 10 and 15, a prima facie case of obviousness has not been established and this ground for rejection is traversed.

With respect to claim 11, the rejection relies on the reference MICROSOFT. As noted above, this reference is not prior art.

20

With respect to claims 12 and 13, the rejection relies on teachings outside of the reference.

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In that regard, it was old and well known at the time of the invention that linking sites ensured that url data containing a first portion corresponding to the franchise and second portion unique to each franchise store.²⁴

- 5 It appears that the rejection is taking official notice with respect to this teaching. If this is the case, Applicant seasonably traverses the statement and requests a reference in support.

If official notice is not being taken, the rejection cannot amount to a prima facie case of obviousness.

- 10 Rejection of Claim 14 Under 35 U.S.C. §103(a), based on Clark in view of Danneels et al., further in view of MICROSOFT, and even further in view of Spagna (U.S. Patent No. 6,587,837).

To address this ground for rejection, Applicant relies on the comments set forth above for claims 10-13 and 15-18. Namely, the reference MICROSOFT is not a prior art reference, and so
15 the rejection is improper. Further, if the Examiner is taking official notice regarding such a teaching, Applicant seasonably traverses such an assertion and requests a reference in support.

In addition, to the extent that the rejection relies on the combination of *Clark*, in view of *Danneels et al.*, and further in view of MICROSOFT, the comments set forth above for claims 10-13 and 15-18 are incorporated by reference herein.

20

- Rejection of Claim 19 Under 35 U.S.C. §103(a), based on Clark in view of Danneels et al., further in view of MICROSOFT, and even further in view of Allsop et al.

To address this ground for rejection, Applicant relies on the comments set forth above for claims 10-13 and 15-18. Namely, the reference MICROSOFT is not a prior art reference, and so
25 the rejection is improper. Further, if the Examiner is taking official notice regarding such a teaching, Applicant seasonably traverses such an assertion and requests a reference in support.

In addition, to the extent that the rejection relies on the combination of *Clark*, in view of *Danneels et al.*, and further in view of MICROSOFT, the comments set forth above for claims 10-13 and 15-18 are incorporated by reference herein.

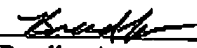
30

²⁴ The Office Action, dated 06/30/04, Page 21, only full paragraph.

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For all of the above reasons, the present claims 1-19 are believed to be in allowable form.
It is respectfully requested that the application be forwarded for allowance and issue.

Respectfully Submitted,

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